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AT&T

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February 13, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Ex Parte Presentation
GN Docket 96-245

Dear Mr. Caton:

Today I met with Kerry Murray, Senior Legal Advisor of the International Bureau to discuss AT&T's views expressed in its comments. The attached material was also used in our discussion.

Two copies of this Notice are being submitted to the Secretary of the Federal Communications Commission in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

Kristen C. Thatcher

Attachments

cc: Kerry Murray
Don Gips
Jamie Hedlin

Competitive Safeguards Needed As Conditions on the BT/MCI Merger

Although notable progress has been made in the UK, BT continues to operate without effective competition in every sector of the UK market. Therefore, the BT/MCI merger should be approved subject to the following conditions:

CONDITIONS

- The obligations the Commission imposed on the first BT/MCI approval should be imposed on this application (non-exclusivity and no special concessions obligations)
- BT should be required to establish a settlement rate based on TSLRIC methodology to unaffiliated US carriers. BT/MCI must provide 1 year's notice before BT routes any US destined traffic to MCI outside of traditional proportionate return rules to enable unaffiliated carriers time to reconfigure facilities
- BT should be prohibited from routing its traffic through MCI to third countries
- BT must give assurance that US carriers have reasonable and nondiscriminatory access to bottleneck network elements controlled by BT

UK REGULATORY REFORMS

BT must agree to provide:

- ***Equal Access Presubscription*** - Does not exist in the UK. From a US perspective, it seriously limits the opportunity for US carriers to find termination options at rates competitive with BT in the UK. As a UK operator, without equal access they are limited in their ability to capture a meaningful share of BT's outbound traffic as well[1]
- ***Dialing Parity*** - Does not exist in the UK. UK customers that choose "indirect access providers" (like ACC, AT&T-UK) must dial a three-digit access code on a call-by-call basis. Calls dialed without an access code are automatically routed by default to BT. Without dialing parity, it is impossible for competitors to capture any real percentage of customers willing to dial extra digits. We learned this lesson in the United States

[1] This fact is confirmed by recent data. From 1994 to 1995, BT's market share of the public switched voice international facilities market remained relatively stable, declining only .9% from 68.6% to 67.7%. During same time, the market share of MCL declined 28.1% to 25.5%, while new international resellers grew from 3.3% to 6.5% of the market. Data suggests that emergence of new international providers in the UK has had little effect on BT's position in the market. Instead, MCL's market share drop reflects the churn among BT's competitors for that market segment already willing to switch from BT and incur the inconvenience of dialing protocols. The net result is that US carriers are and will remain dependent on BT and subject to BT's price and non-price discrimination.

- ***Number Portability*** - BT should be required to permit the portability of U.S. carrier access codes used for existing or new bilateral or global services[2]

EXAMPLE OF COMPETITION DISTORTION BY BT/MCI

- BT/MCI's ability to use BT's market power over call termination in the UK to distort competition in the U.S. is best illustrated by MCI's recent pricing action on the U.S.-UK route. On December 31, 1996, MCI revised its FCC Tariff No. 1 to establish a consumer offer for U.S.-UK calls at $0.12 per minute. Because MCI's traffic on the U.S.-UK route is principally business customer traffic, whereas AT&T's is consumer traffic, MCI's price reduction will decrease MCI's revenues on the U.S.-UK route by $5 million; AT&T's decision to match MCI's price will reduce AT&T's revenues by $15 million. Importantly, BT will recoup more than $4 million in additional settlement payments from the stimulated traffic volumes the price reductions are projected to generate. At this point, U.S. consumers benefit even though revenues will shift from U.S. competitors to BT.

- If proportionate return is relaxed or eliminated on the U.S.-UK route, BT will have the incentive and opportunity to shift revenues to it from U.S. carriers at the expense of U.S. consumers and carriers. If BT diverts all of its minutes to MCI, U.S. carriers' settlement costs to BT would rise from about 3 1/2 cents/min. today to as much as $0.11 per minute (a 200% increase in the effective settlement rate paid today to BT). At that level, all unaffiliated U.S. carriers would be required to pay BT $.11 of the $0.12 per revenue collected for U.S.-UK calls. Of course, unaffiliated U.S. carriers also must recoup other costs in their price, but they would be constrained (legally or as a matter of prudent business decision-making) in their ability to respond to the US-UK price. In the short run, US consumers benefit while in the longer run US competition is eliminated.

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[2] Although BT now is obligated to make non-geographic customer number portability available, the way in which that portability will apply to special access codes used for existing correspondent services, like country direct, is uncertain. Country direct, like AT&T's USADirect®, is provided pursuant to bilateral operating agreements today. BT has assigned a non-geographic carrier access code to AT&T's USADirect service which directs calls to the AT&T USADirect platform. AT&T has incurred significant marketing expense to advertise that access code both in the UK and on worldwide advertising material. If BT is not legally obligated to allow unaffiliated U.S. carriers to move their country direct access codes to another UK entity, BT could exercise its power to prevent U.S. carriers from transferring their non-geographic country direct access codes to other UK correspondents. BT's incentive to do so will arise not only from the settlement payments it receives on U.S. carrier country direct services, but also from the clear competitive harm that its U.S. carrier competitors would suffer thereby.